

***United States Court of Appeals
for the Second Circuit***



**SUPPLEMENTAL
APPENDIX**

77-7066

United States Court of Appeals
For the Second Circuit.

WALTER PARSELL and VIOLET PARSELL, GEORGE
HOOPER, HOUSATONIC MARINA, Inc., SHELL
FISH LABORATORY, a partnership by Edwin C.
FORDHAM, partner, and EDWIN C. FORDHAM
EAST END YACHT CLUB, Inc., individually and
on behalf of various pleasure boat owners,

Plaintiffs-Appellants,

against

SHELL OIL COMPANY and BUCKLEY BROS.,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF CONNECTICUT.

Appellees' Brief and Supplemental Appendix

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Table of Contents.

	Page
Statement of Issues	1
Statement of Case	1
POINT I. There is no private right of action conferred by Title 33 U.S.C. §407—the Rivers and Harbors Act of 1899	4
POINT II. There is no federal common law creating independent jurisdiction under 28 U.S.C. §1331	9
POINT III. A right to jury trial is not available in admiralty nor is there pendent jurisdiction of a state law claim permitting a right to jury trial	10
Conclusion	11
Supplemental Appendix	SA1
East End Yacht Club Itemized Statement of Special Damages	SA2
Portions of Deposition of Pasquale Petrino	SA5

TABLE OF CASES.

Americana of Puerto Rico, Inc., v. Transocean Tankers Corp., 317 F. Supp. 798 (D. P.R. 1969)	9
Atlas Roofing Co., Inc., v. OSHRC, 45 U. S. L. Week 4313 (U. S. Mar. 23, 1977)	10
Chesapeake Bay Bridge and Tunnel District v. Lauritzen, 404 F. 2d 1001 (4th Cir. 1968)	8
Connecticut Action Now, Inc., v. Roberts Plating Co., 457 F. 2d 81 (2nd Cir. 1972)	6, 7

ii.

	Page
Cort v. Ash, 422 U. S. 66 (1975)	5
Davis v. W. Bruns & Co., 476 F. 2d 246 (5th Cir. 1973)	11
Employees v. Missouri Public Health Dept., 411 U. S. 279 (1973)	7
Executive Jet Aviation v. Cleveland, 409 U. S. 249 (1972)	11
Illinois v. City of Milwaukee, 406 U. S. 91 (1972)	5, 9
Parsell, <i>et al.</i> v. Shell Oil Company, <i>et al.</i> (2nd Cir., Docket No. 75-7626)	3
Parsons v. Bedford, 3 Pet. 433 (1830)	10
Red Star Towing and Transp. C. v. Department of Transportation of New Jersey, 423 F. 2d 104 (3rd Cir. 1970)	7
Red Star Towing and Transportation Company v. State of Connecticut, Civil No. B 75-360 (D. Conn. Oct. 26, 1976)	7, 8
Red Star Towing and Transportation Company v. State of Connecticut, <i>et al.</i> , F. 2d (Docket No. 76-7586, April 27, 1977)	7, 8
Romero v. Bethlehem, 368 F. Supp. 890, aff. 515 F. 2d 1249 (5th Cir. 1974)	9
Romero v. International Term. Operat. Co., 358 U. S. 354 (1959)	11
U. S. v. Pennsylvania Industrial Chem. Corp., 411 U. S. 655 (1973)	4, 9
U. S. v. Standard Oil Co., 384 U. S. 228 (1966)	5

Williamson Towing Co., Inc., v. State of Illinois, 534 F. 2d 758 (7th Cir. 1976)	7
---	---

STATUTES:

The Rivers and Harbors Appropriation Act of 1899, 30 Stat. 1152, 33 U.S.C. §407	1, 2, 4, 8
Admiralty, maritime and prize cases, 63 Stat. 101, 28 U.S.C. §1333	3
72 Stat. 1770, 28 U.S.C. §1292(b)	3
30 Stat. 1153, 33 U.S.C. §411	5
Fed. Water Pollution Control Act, 62 Stat. 1155, 33 U.S.C. §1151	7
National Environmental Policy Act of 1969, 83 Stat. 852, 42 U.S.C. §4321	7
The Bridge Act of 1906, 34 Stat. 84, 33 U.S.C. §491	7, 8
Federal Question Jurisdiction, 72 Stat. 415, 28 U.S.C. §131	9

CONSTITUTIONAL PROVISIONS:

United States Constitution, Seventh Amendment	10
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United States Court of Appeals

FOR THE SECOND CIRCUIT.

WALTER PARSELL and VIOLET PARSELL, GEORGE HOOPER, HOUSATONIC MARINA, Inc., SHELLFISH LABORATORY, a partnership by Edwin C. Fordham, partner, and EDWIN C. FORDHAM, EAST END YACHT CLUB, Inc., individually and on behalf of various pleasure boat owners,

Plaintiffs-Appellants,

against

SHELL OIL COMPANY and BUCKLEY BROS.,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF CONNECTICUT

APPELLEES BRIEF.

Statement of Issues.

Does an oil spill in navigable waters causing property damage to dockside facilities present federal question jurisdiction under Section 13 of the Rivers and Harbors Act of 1899, 33 U.S.C. §407 or the federal common law?

Statement of Case.¹

This action filed on February 5, 1973, claims damages for property and business losses allegedly caused by an oil spill in Johnson's Creek, Bridgeport, Connecticut in

¹In view of events occurring subsequent to the filing of the instant appeal, it is felt that it would be helpful to briefly outline the procedural background of the case.

the Spring of 1970. The defendants are Shell Oil Company and Buckley Bros., Inc., an oil terminal located on Bridgeport Harbor. Jurisdiction purports to be based upon a "maritime tort" and Title 33 U.S.C. §407—§13 of the Rivers and Harbors Act of 1899. By date of October 4, 1974, Shell Oil Company moved for a summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. The plaintiffs filed cross motions for summary judgment against both Shell Oil Company and Buckley Bros. Inc. All motions were submitted to the court on stipulated facts substantially as follows.

On June 15, 1970, there was a discharge of oil onto Johnson's Creek. The oil spill came from the overflow of Buckley's No. 7 tank and through a rupture in a six-inch cast iron plug on the tank. The overflow resulted from the failure of a Buckley workman to properly align a valve located on a pipe through which a cargo vessel "Overseas Audrey" was pumping No. 2 oil.

The valve on the pipe in question was located approximately one quarter of a mile away from the vessel, and the work of discharging the oil and alignment of the valves was being performed by and in control of Buckley Bros. employees. The power source for the discharge of the oil into the pipes came from pumps on the vessel "Overseas Audrey" under charter to defendant, Shell Oil Company. As soon as the crew members of the vessel were advised of the spill from tank No. 7, all pumping operations were stopped. Approximately 655,000 gallons of No. 2 oil were spilled.

In accordance with the stipulation, the District Court determined as a matter of law that under applicable maritime negligence principles, the uncontroverted evidence submitted permitted no inference of control which might conceivably create any duty which was breached by Shell

Oil Company, and by memorandum of decision dated September 2, 1974, granted summary judgment in favor of Shell and denied plaintiffs' cross motions. Following a denial of a motion to re-argue the summary judgment ruling, the plaintiffs appealed to this Court. *Parsell, et al. v. Shell Oil Company, et al.* (2nd Cir., Docket No. 75-7626). That appeal was subsequently discontinued without prejudice by stipulation dated May 3, 1976. This left as the remaining and sole defendant, Buckley Bros., Inc.

In light of the plaintiffs' complaint that the claim for relief was one based upon a maritime tort and the references made in their pleadings in opposition to the motion for summary judgment as to Shell Oil Company that they had "a good, valid and meritorious admiralty action," Buckley Bros., Inc. moved to dismiss the jury claim on the basis that federal jurisdiction, being based upon admiralty and maritime claims (Title 28 U.S.C. §1333) did not give the plaintiffs a right to trial by jury. This motion was granted by Judge Jon O. Newman on October 19, 1976 and leave to appeal from this order was granted pursuant to 28 U.S.C. §1292(b) on January 28, 1977.

Conceded claims falling within admiralty jurisdiction were those of George Hooper (claiming damage to his shellfish beds in the Bridgeport Harbor) and Shellfish Laboratory (claiming damage to young oysters being raised in rafts in the Housatonic River). Other requests for relief such as loss of boat rentals, damage to shore side equipment, and the like presented more difficult traditional admiralty claims. On April 18, 1977, however, stipulations for dismissal with prejudice were filed and ordered as to all plaintiffs with the exception of East End Yacht Club, Inc. This left only East End Yacht Club, Inc., as plaintiff, and Buckley Bros., Inc., as defendant, changing the posture of the case considerably.

East End Yacht Club makes claim for the replacement and repair of club floats (for which it has apparently been compensated), damages to an aeration system, loss of revenue including loss of the profit derived from its annual picnic and a variety of miscellaneous other items set forth in its itemized statement of special damages (SA-2).² The Club's Commodore Pasquale Petrino testified at his deposition on January 25, 1971 that the Club suffered losses at its restaurant by virtue of the oil spill (SA-3), it had to replace the styrofoam in the floating finger piers (SA-5), oil was tracked into the Club (SA-6) and there was a delay in the construction of the new club house (SA-6). These types of damages are considerably different from those made by other plaintiffs complaining of pollution to navigable water. However, by virtue of the stipulations for dismissals with respect to all other plaintiffs, these are the only claims of damage remaining in the case.

POINT I.

There is no private right of action conferred by Title 33 U.S.C. §407—the Rivers and Harbors Act of 1899.

Section 13 of the Rivers and Harbors Act of 1899—33 U.S.C. §407 provides in pertinent part that it shall not be lawful to discharge from the shore or any manufacturing establishment any refuse matter of any kind or description into any navigable water of the United States whereby navigation shall or may be impeded. The Act has consistently been held to protect navigable waters—both from obstructions to navigation and industrial pollution and provides for two separate offenses. *U.S. v. Pennsylvania Industrial Chem. Corp.*, 411 U.S. 655 (1973). The first

²“SA” refers to the supplemental appendix annexed hereto.

offense relates to the deposit of refuse matter into navigable waters and the second relates to the deposit of material on the banks of navigable waters which might thereby become flotsam and obstruct navigation. The term "refuse" means all foreign substances including pollutants. *U.S. v. Standard Oil Co.*, 384 U.S. 228 (1966). In sum, there is a flat ban against the unauthorized deposit of foreign substances into navigable waters, regardless of the effect on navigation. This statutory interpretation is consistent with the federal policy of encouraging the abatement of pollution in interstate waters. *Illinois v. City of Milwaukee*, 406 U.S. 91 (1972).

Penalties for the Act's violation are set forth in Title 33 U.S.C. §411 which provides that a violation constitutes a misdemeanor punishable by fine not to exceed \$2,500 or imprisonment of not more than one year. The Act on its face creates no private civil remedy but is wholly penal in nature providing only *qui tam* relief to an informer if a prosecuted offense leads to conviction.

In the light of *Cort v. Ash*, 422 U.S. 66 (1975), the court below found that Section 407 evidenced a statutory scheme lodging enforcement solely in the Department of Justice and that there was no justification for implying a private remedy. The criteria set forth in *Cort v. Ash*, *supra*, are as follows:

"In determining whether a private remedy is implicit in a statute not expressly providing one, several factors are relevant. First, is the plaintiff 'one of the class for whose special benefit the statute was enacted,'— that is, does the statute create a federal right in favor of the plaintiff? Second, is there any indication of legislative intent, explicit or implicit, either to create such a remedy or to deny one? Third, is it consistent with the underlying purposes of the legislative scheme to imply such a remedy for the plaintiff? And finally, is the cause

of action one traditionally relegated to state law, in an area basically the concern of the States, so that it would be inappropriate to infer a cause of action based solely on federal law?"

The plaintiffs before the court below were of a more expansive group than presently exists. Nevertheless, following the above criteria, Judge Newman found that the plaintiffs were not one of a class for whose special benefit the statute was enacted, Congress had not authorized private Attorney Generals to enforce this section of the Act, and implication of a private remedy would upset the enforcement of other federal water quality statutes. Finally, the court below noted that the state law of nuisance and the federal law of admiralty provided ample traditional remedies. As such, the court held that it would be inappropriate to create a claim for relief based solely on federal law (A-15).

In its present posture it is difficult to understand how the remaining plaintiff could possibly argue that the statute was designed to protect against the type of damage alleged here. There is no complaint by East End Yacht Club of either interference with navigation or the pollution of the nation's waters. Rather, the claim is for property damage wholly unrelated to the concerns expressed by the statute and its judicial interpretation. Likewise, as was noted by the court below, enforcement of the Act is vested solely in the Department of Justice, and it is apparent that the "federal government is to be the initiator of the proceeding." *Connecticut Action Now, Inc. v. Roberts Plating Co.*, 457 F. 2d 81 (2nd Cir. 1972). The intent of Congress therefore was to deny rather than create a federal remedy for violations of the Act, and indeed, permitting a private right of action under Section 13 would run afoul of recently enacted federal water quality laws and upset the uniformity of application given

to the law by state and federal agencies. See: *Fed. Water Pollution Control Act*, 62 Stat. 1155, 33 U.S.C. §1151; *National Environmental Policy Act of 1969*, 83 Stat. 852, 42 U.S.C. §4321.

Any lingering doubts on the issue must be assuaged by this court's recent decision in *Red Star Towing and Transportation Company v. State of Connecticut, et al.*, F. 2d (Docket No. 76-7586, April 27, 1977). That case involved a tug and tow's collision with the Tomlinson River Bridge operated by the State of Connecticut. The plaintiff claimed that sovereign immunity had been waived by virtue of the State's operation of a bridge over navigable waters and in violation of the Bridge Act of 1906—Title 33 U.S.C. §491. Recent Supreme Court decisions have indicated that there can be no implied waiver of sovereign immunity unless Congress has created a private cause of action in its statutory scheme. *Employees v. Missouri Public Health Dept.*, 411 U.S. 279 (1973). The plaintiff attempted to meet this criteria by suggesting that the Bridge Act of 1906 created a private remedy. The argument was expressly rejected by the District Court. *Red Star Towing and Transportation Company v. State of Connecticut*, Civil No. B 75-360 (D. Conn. Oct. 26, 1976).

"In the present case, a careful examination of the various provisions of the Bridge Act of 1906, 33 U.S.C. §491, *et seq.* discloses no indication of any intent by Congress to permit individuals to sue a state in the federal courts for violations of the Act. The Bridge Act of 1906 creates no private civil cause of action; only the United States is authorized to enforce the Act's penal sanctions. See: 33 U.S.C. §§ 494, 495 (1970); *Williamson Towing v. State of Ill.*, *supra*, at 436; *Red Star Towing and Transp. Co. v. Department of Transportation of New Jersey*, 423 F. 2d 104 (3rd Cir. 1970); *c.f. Connecticut Action Now, Inc. v. Roberts Plating Co.*, 457 F. 2d 81 (2nd Cir. 1972); but see *Chesapeake Bay Bridge and Tunnel District v. Lauritzen*, *supra*."

The District Court concluded that as no private right of action was created by the Bridge Act of 1906, the State of Connecticut did not waive its immunity and accordingly entered judgment in its favor. This judgment was appealed to the Court of Appeals in *Red Star Towing and Transp. Co. v. State of Connecticut, et al., supra*, and argued before a panel of Judges Mansfield, Palmieri and Smith, sitting by designation. After oral argument, the Court *per curiam* affirmed the lower court's judgment dismissing the complaint and expressly disapproving the holding in *Chesapeake Bay Bridge and Tunnel District v. Lauritzen*, 404 F. 2d 1001 (4th Cir. 1968) relied upon by the appellant herein.

As this court has concluded that there is no private remedy afforded a tug and tow damaged by its collision with a bridge in navigable waters under 33 U.S.C. §4991, it must follow that there is no private right of action afforded this yacht club for the variety of claims set forth in the itemized statement. The court below was entirely correct when it held "that Section 407 does not create a private cause of action under the laws of the United States so as to provide an independent basis for federal jurisdiction outside of admiralty." This was the correct holding even though there were certain plaintiffs at that time who made arguable claims of injury by virtue of pollution to navigable waters. *A fortiori* the statute cannot avail the East End Yacht Club for the types of property damage claims it is making in the instant case wholly unrelated to navigation or the pollution of navigable waters.

POINT II.

There is no federal common law creating independent jurisdiction under 28 U.S.C. §1331.

While certainly not an expressed claim of jurisdiction set forth in the complaint, the court below considered the claim of an independent right of action under the federal common law of water pollution.³ *Illinois v. City of Milwaukee*, 406 U.S. 91 (1972). The *Illinois* case was found to be distinguishable on the facts before it on the grounds that the plaintiff was a governmental entity, the pollution complained of was of an interstate nature and the remedy sought was injunctive relief and not money damages. Equally significant, perhaps, is the fact that the ultimate issue in *Illinois* was original jurisdiction—not water pollution. Finally, it is doubtful if the court in *Illinois* meant to confer federal jurisdiction to private litigants for every incident of pollution involving navigable waters.

All of the reasons posited by the court below were compelling even when there were plaintiffs, such as George Hooper, who had actual complaints of the pollution of navigable waters. With the only plaintiff now remaining making no real complaint of pollution to navigable waters but only to shore side property damage and loss of business profits, it is clear that such rights as *Illinois v. Milwaukee* may confer are inapplicable. Neither *Illinois v. Milwaukee* nor *U.S. v. Penn Industrial Chem. Corp.*, *supra*, suggest that a new federal cause of action

³It is suggested that the court below need not have been so liberal. Where a maritime claim is relied upon and identified as such, there is no right to trial by jury. *Americana of Puerto Rico, Inc. v. Transocean Tankers Corp.*, 317 F. Supp. 798 (D. P.R. 1969); and see: *Romero v. Bethlehem*, 368 F. Supp. 890, aff. 515 F. 2d 1249 (5th Cir. 1974).

should inure to a plaintiff of the type herein making complaints of oil being tracked around its club room floor and losses from the annual picnic. Indeed, if such a holding were made, the federal courts would be inundated with traditional state law nuisance claims.

POINT III.

A right to jury trial is not available in admiralty nor is there pendent jurisdiction of a state law claim permitting a right to jury trial.

Point IV of the plaintiff's brief suggests that even in admiralty this case is one which would have been tried before a jury prior to the passage of the Seventh Amendment. Such a claim is clearly frivolous. As recently as March of this year, the Supreme Court noted that there were no juries in admiralty and that fact finding was performed without juries. *Atlas Roofing Co., Inc. v. OSHRC*, 45 U.S. L. Week 4313 (U.S. Mar. 23, 1977). The court wrote that "the phrase 'suits at common law' has been construed to refer to cases tried prior to the adoption of the Seventh Amendment in courts of law in which jury trial was customary as distinguished from courts of equity or admiralty in which jury trial was not. *Parsons v. Bedford*, 3 Pet. 433 (1830)."

None of the cases cited by the plaintiff have any relevance or bearing on the issue of whether admiralty afforded a right to trial by jury prior to the adoption of the Seventh Amendment. The cases relate, *inter alia*, to derivative actions, actions to enjoin nuisances, suits under COGSA, actions enforcing federal tax liens and the like. No case is cited which even remotely suggests that the courts of admiralty afforded a trial by jury in suits of this nature prior to the passage of the Seventh Amendment.

Nor can the vague reference to pendent jurisdiction avail the plaintiff. Unlike *Romero v. International Term. Operat. Co.*, 358 U.S. 354 (1959), there is no separate and independent federal claim, such as the Jones Act, to which a state law claim could append. If a federal claim exists, it exists solely in admiralty, and there is no pendent state law claim permitting trial by jury. If, on the other hand, it is determined that the case presents nothing but a state law claim, then there is no federal claim of substance sufficient to confer subject matter jurisdiction on the court. In its present posture the case seems to fall more properly in the latter category. It deals with a simple land based tort alleging damage to property affixed to the shore with no relationship to traditional maritime activities. *Executive Jet Aviation v. Cleveland*, 409 U.S. 249 (1972). Pier side injury caused by land based apparatus "must seek shelter in some port other than that established by maritime jurisdiction." *Davis v. W. Bruns & Co.*, 476 F. 2d 246 (5th Cir. 1973). As such, the case might well be dismissed for lack of federal jurisdiction leaving the plaintiff to its state law remedies available in the state courts.

Conclusion.

For the foregoing reasons it is respectfully requested that the decision of the court below be affirmed and that the case be remanded with instructions that the case be dismissed for lack of subject matter jurisdiction.

THE DEFENDANTS-APPELLEES,

By DION W. MOORE

PULLMAN, COMLEY, BRADLEY & REEVES

855 Main Street

Bridgeport, Connecticut 06604

SA 1

Supplemental Appendix.

UNITED STATES COURT OF APPEALS,

FOR THE SECOND CIRCUIT.

WALTER PARSELL and VIOLET PARSELL, GEORGE HOOPER,
HOUSATONIC MARINA, Inc., SHELLFISH LABORATORY, a part-
nership by Edwin C. Fordham, partner, and EDWIN C.
FORDHAM, EAST END YACHT CLUB, Inc., individually and
on behalf of various pleasure boat owners,

Plaintiffs-Appellants,

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SHELL OIL COMPANY and BUCKLEY BROS.,

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF CONNECTICUT.

Itemization of Damages of East End Yacht Club,
Inc. SA2

Portions of Deposition of Pasquale Petrino SA5

**East End Yacht Club
Itemized Statement of Special Damages.**

1. Bradley—Upson: For replacement and repair of Club Floats and other damage	41,980.00
2. Federal Electric: For dock rewiring (quote from County Electric \$15,660.00)	13,885.00
	55,865.00
Credits for amounts Travelers paid to Bradley—Upson and Federal Electric or for them:	55,865.00
3. Clean bulkhead	1,600.00
4. Launching ramp, 92' x 44' x 2" depth (Club member labor, trap rock and road mix)—excavate and install (D'adario quote)	6,100.00
5. Incidental costs to clean up	1,000.00
6. Emergency lighting during clean up to protect marina	500.00
7. Cost of installing master areation system and cost of equipment by club members, equipment purchased from Scales Engineering, Quote by Scales Engineering Co. for whole job	20,000.00
8. Loss of potential revenue for Season, 5 months @\$1,000.00 per month	5,000.00
9. Loss of Picnic profit, including bar	800.00

SA 3

10. Cancelled boat reservations for Strawberry Festival, June, 1970, 18 boats @ \$10.00 per night, 2 or 3 nights 500.00
11. Lost use of club members' boats during period of time restricted from boarding craft per order of Coast Guard, 180 boats docked at Club, charter rates \$300.00 for 28' craft and \$150.00 for outboard runabout, average cost for two weeks 40,000.00
12. Additional time lost awaiting opening of Johnson's Creek and loss of use while in for repairs, two to six weeks 80,000.00
13. Additional costs for labor which would have otherwise been provided by Club members, see production 5 A 1
 - (a) Electrical—\$6,700.00
 - (b) Watchman's pay—\$264.00
 - (c) Pick up labor—\$100.00
 - (d) Reiner Construction (finish work)—\$2,000.00
 - (e) Edward Simons (additional plumbing)—\$3,500.00
 - (f) Al Karr (extra flashing)—\$85.00
 - (g) Oakland Tile (laying floor)—\$917.80
 - (h) Mr. Kwoka (cool box)—\$354.00

SA 4

(i) J. J. Fence (fire escape)—\$1,000.00	
(j) Fire Escape Fabrication (not being able to weld due to oil)—\$300.00	
(k) Master Tile Co. (ceramic tile)—\$560.00	
(l) Vito DeMartino (outside trim paint)—\$370.00	
(m) J. J. Fence (outside welding railings)—\$230.00	
(n) Charles Sheet Metal (ducts)—\$600.00	
(o) Loss of voluntary help to construct new building in addition to above—\$4,000.00	
Subtotal—	20,980.80
14. County Electric bid 15,660.00 less paid by Travellers 13,885.00 due	1,985.00
15. Repaint docks, ramps, ships, etc. by members (Quote from Washington Decorator 5A2)	3,500.00
16. Labor for moving and shifting 200+ boats, trailers and dock cranes to facilitate removal of oil and later to refit docks, approximately 1200 man hours @\$5.00 an hr.	6,000.00
17. Clean launching ramp	2,000.00
Total	\$245,830.80

Portions of Deposition of Pasquale Petrino.

Q. Was there any change in your income from 1968 to 1969? A. No. I believe it was about stable.

Q. Did it change at all in 1970? A. '70 is a hard year because of the new building.

Q. I'm talking about your income now, not your expenditures. A. No. Because of the new building it's a hard year because we did expend so much more with that new building going up, and I am not certain just what the figures are. We don't have them in our hands just yet. They will be delivered to us in March. That's our annual meeting, and all our figures are given from the CPA.

Q. Did your income insofar as rental of boat slips, lockers—has that changed in any manner? A. No.

Q. Was your restaurant in 1970 still being operated on a concession basis? A. In 1970 at times, yes. We had a very bad year for the restaurant. We couldn't keep people there. Once the oil spill came down nobody wanted to eat.

• • •

Q. Were any repairs made to these docks subsequent to the finding of oil? A. Repairs made after the spill?

Q. To the docks, yes. A. Yes.

Q. When was that? A. Between two and three weeks after the spill.

Q. What was done in terms of repairs? A. All the docks were taken out of the water and repaired, taken apart and all new styrofoam was placed in.

Q. Was any of the planking renewed or new planking put in? A. The only time new planking would have been put in is if it was broken by a contractor or split when they hoisted it.

Q. Do you have all the bills involved in having all this repair work done? A. Yes.

Q. When were the docks completely repaired? A. It was well in September before the job was finished.

Q. They are presently in good order and repair? A. Yes.

* * *

Q. What other damage did you sustain? A. What other damage, physical?

Q. Yes, physical, to the physical aspects of your property. A. The whole thing was soaked up in oil. The shoreline, ramp, what not. Oil was tracked into the club. We had damages because of the spill itself, the contractors wouldn't continue on. They were scared to continue on because the Fire Department was there and watching everybody.

The welding that was tying in portions of our backwalk had to stop. The carpenters couldn't stand the oil, he wouldn't stay around. The mason wouldn't be doing much work there.

Q. How long after the spill did these people refuse to work? A. They came back a couple of weeks, three or four weeks after the spill, when this cleared up a bit. Well, we lost all of our volunteer help that we had counted on with the construction of this building. We had to subcontract—we were the general contractor. We did all the subcontracting work, this particular building.

Q. Did all building activities, in building this building, stop? A. For well into three weeks, at least three weeks, all of it stopped.

* * *

Q. Did this oil spill cause any damage to the aerator system that was in there? A. It might have damaged the lines somewhat. It softened up some of the plastic. But it's impossible to run them without power. You need electricity to run these compressors.

SA 7

We did not have electricity.

Q. You didn't have electricity on the docks? A. We didn't have it since the time of the spill.

• • •

Q. Where on the docks are the duplex waterproof receptacles located? A. On 4x4 posts.

Q. How far above the planking of the dock is that located? A. Around five feet.

Q. What damage was caused to these duplex receptacles by the oil? A. Because the docks had to be taken out to be rebuilt or new styrofoam put in, the electrical inspector claimed that there is now a revision in the marina codes, and once your electrical lines are dismantled, they will no longer be allowed to be put up.

WALTER PARSELL and VIOLET PARSELL, GEORGE HOOPER, HOUSATONIC MARINA, Inc.,
SHELIFISH LABORATORY, a partnership by Edwin C. Fordham, partner, and
EDWIN C. FORDHAM, EAST END YACHT CLUB, Inc., individually and on behalf of
various pleasure boat owners,

Plaintiffs-Appellants,

against

SHELL OIL COMPANY and BUCKLEY BROS.,

Defendants-Appellees.

State of New York, County of New York, ss.:

Kenneth P. Riccardi, being duly sworn deposes and says that he is agent
for Pullman, Comley, Bradley & Reeves, Esqs. the attorney
for the above named Appellees Brief & Supplemental Appendix herein. That he is over
21 years of age, is not a party to the action and resides at 2821 W. 12th St. Bklyn, N.Y. 11224

That on the 18th day of May, 19 77, he served the within

APPELLEES BRIEF AND SUPPLEMENTAL APPENDIX

upon the attorneys for the parties and at the addresses as specified below

Daniel Shepro, Esq.
Goldman & Rosen

~~Attorneys at Law.~~

by depositing Two (2) true Appellees Brief & Supplemental Appendix
to each of the same securely enclosed in a post-paid wrapper in the Post Office regularly main-
tained by the United States Government at
90 Church Street, New York, New York
directed to the said attorneys for the parties as listed above at the addresses aforementioned,
that being the addresses within the state designated by them for that purpose, or the places
where they then kept offices between which places there then was and now is a regular com-
munication by mail.

Sworn to before me, this 18

day of May, 1977

} Kenneth P. Riccardi

Roland W. Johnson

ROLAND W. JOHNSON,

Notary Public, State of New York

No. 4509705

Qualified in Delaware County

Commission Expires March 30, 1977

Two 2

of ~~255~~ (3) copies of
is

by admitted this 18th day
of May 1977

Rosener, Rosener & Olman
Attorney for Plaintiffs - Appellants